

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 vs.) Criminal No. 04-176
)
FREDERICK H. BANKS)

O R D E R

On May 15, 2006, two days after judgment was entered against him, Frederick Banks ("Defendant") filed a Motion to Vacate pursuant to 28 U.S.C. § 2255. (Docket No. 432.) At the order of Court (Docket No. 437), this pleading was subsequently withdrawn. (See Docket No. 445.) Defendant filed a second § 2255 Motion on September 25, 2006 (Docket No. 490), which the Court stayed pending a decision by the United States Court of Appeals for the Third Circuit on the motions Defendant had filed with that Court. (Docket No. 491.) Before the Court of Appeals ruled on his pending motions, Defendant filed yet a third § 2255 Motion on December 15, 2006 (Docket No. 500), on which the Court has taken no action.

Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, this Court has no jurisdiction over second or successive § 2255 motions without proper authorization from a panel of the Court of Appeals. See 28 U.S.C. § 2255(h). The Court will therefore dismiss with prejudice Docket No. 500 as an unauthorized second § 2255 petition unless Defendant advises the Court within thirty (30) days of the date of this Order that he wishes to

withdraw Docket No. 490, together with Docket Nos. 498 and 499, respectively an affidavit and a brief filed in support of Docket No. 490. Alternatively, Defendant may voluntarily withdraw Docket No. 500.

February 20, 2009

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

cc by U.S. Mail: Frederick Banks
No. 05711-068
Unit 2AU
FCI Yazoo City
P.O. Box 5000
Yazoo City, MS 39194-5000